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MEMORANDUM FOR: Office of Legislative Counsel

STATINTL

ATTENTION:

FROM:

Acting Executive Officer/DDA

SUBJECT: Agency Views on H.R. 6051

The DDA concurs in the draft response prepared by your Office relating to H.R. 6051, the "Federal Intelligence Agencies Control Act of 1977." We have no suggested changes or additions to make.

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AEO/DDA: :smf

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25 APR 1977

Honorable Melvin Price, Chairman
Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter requesting this Agency's views on H.R. 6051, the "Federal Intelligence Agencies Control Act of 1977."

This bill is a complex and far-reaching piece of legislation that would restructure not only the Central Intelligence Agency but the entire National Foreign Intelligence Program and the Federal criminal investigative mechanism. Although I realize the concerns to which H.R. 6051 is addressed, I cannot support those provisions relating to the Central Intelligence Agency and the other components of the Intelligence Community. As to these provisions of the bill relating to law enforcement and investigations, I defer to those agencies and departments with authorities in such areas.

The President recently directed that possible reform of the CIA and the Intelligence Community be studied within the Executive branch. This review is proceeding with some urgency. Concurrently, the Senate Select Committee on Intelligence, pursuant to the terms of S. Res. 400, is studying this matter including possible reforms to the CIA charter and issues relating to the structure and authorities of the Intelligence Community. Until such time as this review in the Executive branch is completed, I would defer specific comment on those provisions of H.R. 6015 relevant to my concerns as Director of Central Intelligence.

Regardless of whatever particular recommendations result from the Administration's study of these matters, there is full recognition among those concerned that the Government retain its ability to collect, analyze and disseminate foreign intelligence to policy makers. I could not support legislation, such as H.R. 6015, that would effectively neutralize the Government's ability to engage in the clandestine collection of foreign intelligence except during periods of declared war. Furthermore, the restrictions on "covert collection" and "clandestine organization" in this bill raise serious doubts that the CIA (or the "Foreign Information Service" under H.R. 6015) or any other Federal agency or component could engage in any intelligence collection activities during peacetime. This is so because "covert collection of foreign intelligence," which would be prohibited during peacetime, is defined in such a way as to include most, if not all, activities reasonably necessary to collect foreign intelligence. For example, prohibited activities would include any activity violative of the laws of the country where collection occurs as well as any activity not publicly

acknowledged by the U.S. Government. These restrictions would make our ability to collect foreign intelligence dependent on "the laws" of other countries--whatever these would be construed to be. Also, these limitations would allow collection to take place only if publicly acknowledged. Simply stated, a basic precept of a country's national security is that if you know what your potential adversaries are doing in terms of collecting information, you know what countermeasures are necessary to negate such collection activities.

Furthermore, the provisions of H.R. 6015 would prohibit the maintenance of an intelligence infrastructure during non-war periods that would be necessary to engage in collection activities at other times. It is important to realize, in this regard, that the capability to develop and utilize intelligence resources can be realized only by long, considered evaluation of intelligence needs and opportunities over a period of time. This capability cannot be turned on and off and still remain effective.

This view of foreign intelligence, Mr. Chairman, overlooks the basic reason for which an intelligence capability exists--namely, to present the policy makers with information necessary to make accurate and knowledgeable decisions affecting this nation's foreign affairs and national security. In large part, a foreign intelligence capability exists to prevent the country from finding itself drawn into a situation where a declaration of war would be necessary. Furthermore, the foreign intelligence program supports a wide variety of essential Government functions related to foreign military, political and economic matters, such as arms limitation verification and world energy resources. The Government's needs in these and other areas, where vital information is often not available openly, require the maintenance of a continued capability to engage in such activities. The existence of a "central" intelligence authority--the CIA--is, in my view, essential to the proper and efficient functioning of this mechanism.

The congressional select committees, under Representative Pike and Senator Church, which thoroughly studied the CIA and the National Foreign Intelligence Program in general during the 94th Congress, did not conclude that clandestine collection of foreign intelligence should be "permitted" only during time of war. Enactment of H.R. 6015, in my view, would be at odds with such studied review by the Congress.

I shall be glad to discuss with you the many vital issues connected with this legislation at the appropriate time.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

STANSFIELD TURNER
Admiral, U.S. Navy

C. H.R. 6051 -- To Prevent and Establish Corrective Mechanisms for "Abuses of Power" by U.S. Intelligence Agencies

1. Introduced 5 April 1977 by Representative Herman Badillo (D., N.Y.) and 13 others.

2. Referred to Judiciary, Banking, Armed Services and Government Operations.

3. Entitled the "Federal Intelligence Agencies Control Act of 1977."

4. Title I encompasses domestic intelligence activities.

a. The Government is prohibited from engaging in "political surveillance" (basically, anything related to First Amendment rights); "preventive action" (harassment, false information, provocation, etc.) also is prohibited.

b. "Selective" investigations and prosecutions are prohibited.

c. The FBI is renamed the Federal Bureau of Criminal Investigation and its jurisdiction over allowable investigative procedures strictly delimited. The bill would establish detailed investigative review procedures and limit the Director to a single six-year term.

d. All responsibility for Government background investigations now conducted by the FBI would be transferred to the Civil Service Commission. FBCI employees would be in the competitive service.

e. The Bureau's budget would be published and GAO would have annual audit responsibilities.

f. "Agent of a foreign power" is narrowly defined to include only officers or employees of foreign powers.

g. Both civil remedies and criminal penalties are provided.

5. Title II covers prohibitions and limitations on investigative procedures.

a. Electronic surveillance is prohibited.

b. Restricts undercover activities involving groups engaged in "First Amendment activity."

c. Government access to and review of credit or tax records and other material would be severely restricted, and the bill would allow mail covers only in very limited circumstances by the Federal Bureau of Criminal Investigation.

d. Both civil remedies and criminal penalties are prescribed for violations.

6. Title III encompasses "Foreign Intelligence Activities."

a. The CIA would be redesignated the "Foreign Information Service" and the DCI would become the Director of the FIS.

b. Except in time of war, the FIS would be prohibited from engaging in any covert collection activities. The FIS would have authority to engage in limited counterintelligence abroad. The National Security Act would be further amended to limit the FIS to advising the NSC on foreign intelligence matters; to making recommendations for coordinating foreign intelligence activities; and to correlating, evaluating and disseminating intelligence information within the Government.

c. All background investigations shall be conducted by the Civil Service Commission.

d. The FIS is prohibited from collecting any information on the "First Amendment activity" of protected persons.

e. The following sections of the CIA Act would be repealed: 5(a) [transfer authority], 5(b) [funds exchange], 6 [exemption for disclosure of Agency personnel, organization, etc.], and 8(b) [unvouchered funds].

f. Publicly-disclosed authorizations would be required for each agency involved in foreign intelligence activities.

g. Criminal penalties and civil remedies are provided for any violation or evasion of the requirements or limits enumerated in this title.

h. "Covert collection" includes techniques which are in violation of the laws of either the U.S. or of the country in which the collection occurs, or which would be in violation of U.S. laws if committed by a foreign country in the U.S.

i. "Clandestine organization" [the use of which in furtherance of covert collection in peacetime would be

prohibited] includes any "secret" proprietorship, corporation or association.

j. "Covert operations" include paramilitary operations, burglaries, bribes, secret payments and assassinations.

7. Title IV amends the FOIA and defines "national defense information."

a. The FOIA exemption would be narrowed to cover only properly classified national defense information, but information that "appears to relate to illegal or unconstitutional activity" would not be exempt from FOIA requirements.

b. "National defense information" is narrowly defined to cover only aspects of military information.

8. Title V establishes the crime of "Official Deceit" by Government officials involved in any cover-up of activities in violation of this Act.

9. Title VI protects Federal officials and employees from adverse action for disclosing or refusing to participate in activity reasonably believed to be illegal.

a. Adverse action against such an individual creates a presumption of wrongful disciplinary action.

b. Civil remedies for violations of this title are provided.

10. Title VII establishes an independent "Office of Special Prosecutor for Violations of Law by Intelligence Agencies."

a. The Special Prosecutor appointed thereunder would have exclusive authority to investigate and prosecute all Federal offenses arising out of intelligence or counter-intelligence activities.

b. A special panel of the U.S. Court of Appeals for D.C. would be established.

c. This title would cease to have effect five years after it takes effect.

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